IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4058 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPN - Petitioner(s)

Versus

AHMEDABAD MUNICIPAL KAMDAR UNION - Respondent(s)

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Appearance :

MR DC RAVAL for MR ANAND for Petitioner No(s).: 1.

MR KV GADHIA for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 24/06/2005

ORAL JUDGMENT

1. This petition is directed against the order dated 7th October, 1993 passed by the Industrial Tribunal, Ahmedabad in Reference [I.T.] No. 446/83, whereby the Industrial Tribunal, has directed the petitioner Corporation to give the respondent one advance increment in the higher post.

2. The short facts of the case are that the petitioner is a statutory Corporation constituted under the Bombay Provincial Municipal Corporation Act. It is the policy of the petitioner Corporation that all employees of the Corporation working on the technical side are required to pass the departmental examination known as Local Self Governmental Diploma Examination [“L.S.G.D. Examination.” for short] within five years from their joining the service and those employees who pass the said examination within five years of joining the service are entitled to one advance increment from the date of passing of the said examination.

2.1. It is the case of the petitioner Corporation that the dispute involved in this petition is with regard to release of one advance increment in favour of one Mrs. Mandakini Shah. Mrs. Mandakini Shah joined the petitioner Corporation as a Jr. Clerk with effect from 29.04.1975. At that time, her Pay-scale was Rs.100 – Rs.215 which was later revised to Rs.260 - Rs.400. Mrs. Mandakini Shah passed the L.S.G.D. examination on 12.07.1976 and therefore, was given one advance increment as per the policy of the petitioner Corporation. Hence, one increment

was added in her Pay-scale which was revised to Rs.266 – Rs.400. Thereafter, she was promoted to the Post of Jr. Statistical Assistant w.e.f. 18.08.1977.

2.2. It is further the case of the petitioner Corporation that on being promoted to the higher post of Junior Statistical Assistant, w.e.f. 18.8.1977, Mrs. Mandakini Shah demanded an advance increment in the higher pay scale of the said post.

2.3. Being aggrieved by that, the respondent Union on her behalf raised an industrial dispute which was ultimately referred to the Industrial Tribunal, Ahmedabad for adjudication. The Industrial Tribunal, after considering the case of merits, allowed the Reference and ordered the petitioner Corporation to give one advance increment to Mrs. Mandakini R. Shah in the cadre of Jr. Statistical Assistant w.e.f. 18.8.1977. Hence, this petition.

3. Mr. Raval learned advocate for the petitioner Corporation has submitted that in view of the provisions of Regulation 19 of the Act, Mrs. Mandakini Shah is not entitled for the advance increment, since she has been already granted the advance increment w.e.f. 12.07.1976,

i.e. the date on which she passed the L.S.G.D. Examination. Learned advocate has relied upon the said Regulation 19 which reads as under;

> **"19 (5) The benefit of this Regulation will not be admissible to**
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> **Present Regulation No. 19(5)(a)**:
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> Who hold the post of the minimum of which is or exceeds Rs.220=00 provided that municipal servants passing this examination at the time of officiating on such post but substantively holding a lower post, will be entitled to one advance increment in such lower post only.
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> **Amended Regulation No. 19 (5) (c)**:
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> Who hold the post of the minimum of which is or exceeds Rs.220=00 provided that municipal servants passing this examination at the time of officiating on such post but substantively holding a lower post will be entitled to one advance increment in such lower post only but who hold the post the minimum monthly salary of which exclusive of allowances was or exceeded Rs.320/- during the period from 1.10.63 to 31.12.75 and is or exceeds Rs.650/- from 1.1.76 provided that municipal servants passing this examination at the time of officiating in such post but substantively holding a lower post will be entitled to one advance increment in such lower post only."

3.1. Mr.Raval has submitted that the employees are entitled for the benefits of one advance increment from the date of

passing the said examination. He has contended that in the present case, Mrs. Mandakini Shah had cleared the said examination in the year 1976 and was accordingly, given the benefit of one advance increment from the date on which she cleared the said examination, and therefore, she could not demand the benefit of the another increment in the year 1977 again. He has, therefore, submitted that the Industrial Tribunal has committed error in interpreting Regulation 19 of the Act.

3.2. Mr. Raval has further submitted that the Labour Court while comparing the case of Mrs. Mandakini Shah with Ms. Padia, has not taken into consideration the fact that Ms. Padia had passed the L.S.G.D. Examination on 31.12.1980, and at that time, she was working as a Junior Statistical Assistant and, therefore, she was given one advance increment from the said date and in the said cadre.

4. As against that Mr. Gadia learned advocate for the respondent Union has supported the order of the Industrial Tribunal and has submitted that the respondent is entitled for one advance increment on the higher post.

5. I have heard the learned advocates for the respective

parties and have perused the relevant materials placed on record. While admitting this petition, this Court vide order dated 22nd March, 1994 has stayed the operation of the impugned order. From the documents placed on record, it clearly transpires that Mrs. Mandakini Shah had passed the L.S.G.D. Examination on 12.07.1976, and accordingly, as per the policy of the petitioner Corporation, was given the benefit of one advance increment from the date of her clearing the said examination. Subsequently, Mrs. Mandakini Shah was promoted to the Post of Jr. Statistical Assistant.

5.1. Having gone through the impugned order of the Tribunal, I am of the opinion that the Tribunal has committed serious error in comparing the case of the Mrs. Mandakini Shah with one Mrs. Padia. The said Mrs. Paida had passed the said examination on 31.12.1980 when she was already officiating in the higher post of Jr. Statistical Assistant. Hence, Mrs. Mandakini Shah could not make a grievance that she should also be given the benefit of one increment from the date when she was promoted to the post of Jr. Statistical Assistant, since she was already given the benefit of the said increment, when she was promoted to the said post on 18.08.1977 which would be contrary to Regulation 19 of the Act. Thus, the Industrial Tribunal

has committed a serious error in comparing the case of Mrs. Mandakini Shah with Ms. Padia.

5.2. In above view of the matter, I am of the view that the policy of the petitioner Corporation is consistent with Regulation 19 of the Act and, therefore, the Tribunal ought not to have granted the said relief to the respondent. Thus, on these grounds, the impugned order is required to be quashed and set aside.

6. For the foregoing reasons, the petition is allowed. The order dated 7th October, 1993 passed by the Industrial Tribunal, Ahmedabad in Reference [I.T.] No. 446/83,is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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